IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1506 OF 2004

Ragoson Trading Company P.Ltd.... Petitioner

versus

Smt. Pushpa Tanajirao Kadambande
& ors. ... Respondents.

Shri S.G.Gokhale for the petitioner.
Ms. Sheetal M. Kumar for the respondent no.2.

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 06, 2006.

P.C:

1. Heard the learned counsel for the Petitioner as well as respondent no.2. In view of the facts and circumstances of this case, presence of respondent no.1 at this stage is not required. Hence the matter is being disposed of on the basis of argument advanced by the petitioner.

2. By this petition, the petitioner has sought to set aside the judgment and order dated 28-8-2002 passed by the Appellate Court in Appeal No.46 of 2001.

3. Appeal No.46 of 2001 in Inj.Notice NO.3361 OF 2000 in R.A.D. Suit No. 1250 of 2000 was filed by the original plaintiff against the defendant as he was aggrieved by the judgment and order passed by the trial court dated 20-11-2000 whereby the notice taken out by the appellant/plaintiff was discharged. After hearing both the parties, the Appellate Court allowed the appeal and set aside the order of the trial court and Inj. Notice No. 3361 of 2000 was made absolute in terms of prayer clause (a) and (b). The respondents in the said appeal were restrained from disturbing or taking physical and peaceful possession of the said premises from the appellant/plaintiff, pending the suit.

4. It is to be noted that the suit is pending for final adjudication. It is an admitted and evident position that the order of injunction passed by the Appellate Court does not really affect or cause any prejudice whatsoever to the present petitioner, though it is passed against all the defendants. It is submitted on behalf of the petitioner that even though the order is per say, illegal and therefore has to be set aside, in my considered view, the order has not passed against the present petitioner and therefore it need not to be considered as causing any prejudice whatsoever to the petitioner. The parties who have

been affected by the order have not come against the said order in writ petition. Moreover, the said order is in the interim proceedings in the pending suit and therefore its merit would be adjudicated ultimately at the time of final hearing and therefore I need not go into the merits or demerits of the said injunction passed by the Appellate Court.

5. It was further brought to my notice on behalf of the petitioner in para 19 of the order, the observations as made regarding the alleged deposit of cash amount of Rs. 50,000/- with the petitioner. I have perused the record in that regard and it must be noted that no finding is recorded by the Appellate Court regarding the allegations that the said amount was kept as deposit in cash, out of which the rent amount has to be paid after passing reference as made to that aspect which is involved in the dispute. The learned counsel for the petitioner submitted that he would be satisfied if clarification to that extent is made by this court so as to keep the issue whether the cash amount of Rs. 50,000/- was kept as deposit with the present petitioner and to be determined at the time of final hearing.

6. In view of this aspect, it is clarified that the said observation in the Appellate Court judgment in

para 19 appears to be mere passing the observation and no finding in that record has recorded and therefore this court need not interfere in the said matter except recording that the issue regarding the deposit of the cash amount of Rs. 50,000/- with the present petitioner shall ultimately to be adjudicated by the trial court in the course of final adjudication of the matter.

7. With this observation, the petition stands disposed of with no order as to costs.

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